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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 23

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENTS,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS.

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Concise Statement of the Case	2
Questions Presented	5
Questions Presented Upon the Merits of this Case	5
Summary of the Argument	7
Argument	8
I. Resort to Declaratory Judgment Procedure Is Appropriate in the Circumstances Presented in this Case	8
A. Concerning Jurisdiction of the Federal Court	8
B. Concerning Propriety of Declaratory Judgment Procedure	11
II. Whether Any Questions of the Construction of the Contract Involved Are Governed by State or Federal Law	15
III. The Norris-LaGuardia Act Does Not Prevent Declaratory Judgment Relief in this Case	17
IV. Argument on the Merits	18
A. Concerning Findings of Fact Made by the Trial Court, Concurred in by the Circuit Court of Appeals	18
B. Concerning the Decision in *Virginian R. Co. v. System Federation No. 40, 300 U. S. 515*	25
C. Other Authorities in Support of Validity of the Mediation Agreement	27
D. Concerning the Position of the Carrier	29
Conclusion	30
Appendices:	
A. The Railway Labor Act, 45 U. S. C. A., Secs. 151-153	32-67
B. The Declaratory Judgments Act, 28 U. S. C. A., Sec. 400	67-68
C. The Norris-LaGuardia Act, 29 U. S. C. A., Secs. 101-115	68-77

TABLE OF AUTHORITIES

CASES

	Page
Adams et al v. New York C. & St. L. R. Co., 121 F. 2d 808, Seventh Circuit	13
Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U. S. 227	12
Baltimore & O. R. Co. v Kepner, 314 U. S. 44	16
Erie R. Co. v. Tompkins, 304 U. S. 64	15
Fair, Appt. v. Kohler Die & Specialty Co., 228 U. S. 716	9
Irving Trust Co. v. Day, 314 U. S. 556, 561	16
Moore v. Illinois Central R. Co., 312 U. S. 630	10, 11
Order of Ry. Conductors of America, et al v. National Mediation Board et al, 113 F. 2d 531	28
Prudence Realization Corp. v. Geist, 316 U. S. 89, 95	16
Sola Electric Co. v. Jefferson Electric Co., 63 S. Ct. 172, 173, 174	16
Strack v. Strong, 135 S. W. 2d 754, writ of error dismissed, judgment correct, by Supreme Court of Texas	19
Texas & N. O. R. Co., et al v. Brotherhood of Ry. and Steamship Clerks, etc., et al, 281 U. S. 548	10, 12, 29
Toledo, P. & W. R. R. v. Brotherhood of R. R. Trainmen, etc., 132 F. 2d 265, 274	14
Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515	12, 18, 25, 26, 27
Washington Terminal Co. v. Boswell, 124 F. 2d 235	14
Watson v. M-K-T R. Co. of Texas, 173 S. W. 2d 357, 361, writ of error refused by S. Ct. Texas	17
Williams v. Planters' & Mechanics' National Bank, 45 S. W. 690	18

STATUTES

Declaratory Judgment Act, 28 U. S. C. A., Sec. 400	2, 8
Norris-LaGuardia Act, 29 U. S. C. A., Secs. 105-115	2
Railway Labor Act, 45 U. S. C. A., Secs. 151-163	2, 9, 21, 22, 23, 27, 30

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OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 295-300) is reported in 132 F. 2d 91. The opinion of the United States District Court for the Northern District of Texas (R. 70-77) is not reported.

JURISDICTION.

The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1935.

STATUTES INVOLVED.

The statutes involved are:

The Railway Labor Act (45 U. S. C. A., Secs. 151-163), which is set out in Appendix A;

The Declaratory Judgment Act (28 U. S. C. A., Sec. 40), which is set out in Appendix B;

The Norris-LaGuardia Act (29 U. S. C. A., Secs. 105-115), which is set out in Appendix C.

CONCISE STATEMENT OF THE CASE

For brevity's sake, the General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad Company, an unincorporated association, Petitioner, will be referred to as "Engineers' Committee"; the Missouri-Kansas-Texas Railroad Company, and the Missouri-Kansas-Texas Railroad Company of Texas, will be referred to as the "Carrier"; and the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen of the Missouri-Kansas-Texas Railroads will be referred to as the "Firemen's Committee".

The Engineers' Committee is the representative of the "craft" or "class" of engineers on carriers' lines. The Firemen's Committee is the representative of the "craft" or "class" of firemen on carriers' lines.

This case involves the right of the Carrier to negotiate with the Firemen's Committee concerning *disputes* between the Carrier and the Firemen's Committee, and the validity of an agreement reached as result of such negotiations concerning matters in which both have a bona fide *interest*. The *dispute* in question involves both

the Engineers' Committee and the Firemen's Committee and both Committees have a bona fide *interest* in such *dispute*.

Specifically, this case involves *how*, *when* and *under what conditions* in certain specific instances a man shall be moved from the left to the right side of a locomotive and vice-versa. Clearly, both men are interested in such movement.

Prior to the Mediation Agreement (the settling of the *dispute* between the Carrier and the Firemen's Committee), the Engineers' Committee, with the consent of the Carrier, said *how*, *when*, and *under what conditions* the move would be made (R. 116, 117, 119). The Firemen's Committee complained because it, the Firemen's Committee, had no say in such movement. A *dispute* arose between the Firemen's Committee and the Carrier (R. 191-192). The Carrier tried to settle the *dispute* by conferring with both the Engineers' Committee and the Firemen's Committee but without success (R. 193). The Carrier then endeavored to invoke the services of the Mediation Board to get the *dispute* settled, but that Board would not take jurisdiction (R. 193).

The Carrier then asked both the Engineers' Committee and the Firemen's Committee to handle the *dispute* with the Railway Adjustment Board, and neither organization would avail itself of that Board (R. 193). Again the Carrier tried to get the two together, offering to put into effect any reasonable arrangement mutually satisfactory which did not penalize the Carrier, but to no avail (R. 193).

The Firemen's Committee then asked for mediation (R. 194) and the Carrier tried to get the Engineers' Committee to mediate, but it refused (R. 196). The

Carrier then sought to arbitrate the *dispute*, but the Engineers' Committee declined arbitration (R. 196). All efforts failing to compose the *dispute* with Engineers' Committee, the Carrier, after insistence by the Board, agreed to the Mediation Agreement with the Firemen's Committee (R. 196), and cancelled its arrangement with the Engineers' Committee over the *dispated* issue, in accordance with the Railway Labor Act (R. 196, 197).

Thereafter, the Engineers' Committee brought this suit under the Declaratory Judgment Act, contending that the Mediation Agreement between the Carrier and the Firemen's Committee was illegal because in violation of the Railway Labor Act, which is an act involving interstate commerce; asked that it be adjudicated the sole representative of the craft of engineers, with exclusive rights to negotiate, bargain, and agree collectively with the Carrier as to pay, rules and working conditions of locomotive engineers (R. 33, 34), and alleged that the Mediation Agreement infringed such rights.

The Carrier contended that its action in making the mediation agreement was valid; that both the Engineers' Committee and the Firemen's Committee were *interested* in the *dispute*; and brought in the Firemen's Committee and prayed for declaratory judgment for the guidance of all parties concerning the *dispute*. The Carrier further contended that since both engineers and firemen were *interested* in the *dispute*, it was the duty of the Carrier under the Railway Labor Act to treat with both the Engineers' Committee and the Firemen's Committee, and to exert every reasonable effort to make an agreement for the settlement of such *dispute*, but that it should not be penalized in so doing. The Carrier contended that it had exerted every reasonable effort to settle the *dispute* with both parties but that it failed, and having failed

the Carrier was free to provide for the service involved through the contract it made with the firemen, or by the promulgation of reasonable rules and regulations providing for such service.

The Firemen's Committee contended that the court had no jurisdiction and was without power to declare the Mediation Agreement void, and, in the alternative, that the Mediation Agreement was valid, and sought general relief.

The *validity* of the agreement made by the Carrier with the Firemen's Committee is the issue involved in this lawsuit.

QUESTIONS PRESENTED

This Court has requested counsel to discuss in their briefs and on oral argument the following questions, so far as applicable:

(1) Whether resort to the Declaratory Judgment procedure is appropriate in the circumstances;

(2) Whether any questions of the construction of the contracts involved are governed by state or by federal law;

(3) What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

QUESTIONS PRESENTED UPON THE MERITS OF THIS CASE

The questions presented upon the merits of this case are:

(1) Is a fireman interested in being an engineer?

(2) Having placed the duty upon the Carrier to

exert every reasonable effort to settle disputes with employees in order to avoid any interruption to commerce or to the operation of any carrier, does the Railway Labor Act prevent a carrier from doing just that very thing?

(3) The Railway Labor Act having required a carrier to settle disputes with its employees interested in such disputes, are arrangements for settlement of such disputes made by the carrier with the employees interested in the dispute illegal?

(4) Can there be a bona fide dispute between the carrier and its employees within the contemplation of the Railway Labor Act unless both are interested?

(5) If certain employees have a bona fide interest in a dispute, may the representative of the craft to which such employees belong represent such craft in settling such dispute?

(6) The Railway Labor Act having made it the duty of the carrier to confer with the representative of a class of employees having an interest in a dispute, is it unlawful for the carrier and such representative to make an arrangement for the settlement of such dispute?

(7) If the Firemen have an interest in *how*, *when*, and *under what conditions* a man may be moved from the left side of a locomotive to the right side thereof, and vice versa, and a dispute arises between such man and the carrier over *how*, *when* and *under what conditions* such movement may be made, does the Railway Labor Act forbid the man or his representative from conferring with the carrier and making an arrangement for the settlement of such dispute?

(8) Where both engineers and firemen have a sub-

stantial interest in a given service and are unwilling to reach a fair and just agreement as to such service with the carrier, is not the carrier then free to provide such service necessary for commerce and operation of the carrier in the most practical manner under the Railway Labor Act?

(9) Can this Court set aside the findings of fact as found by the trial court and concurred in by the Circuit Court of Appeals when such findings have support in the evidence?

SUMMARY OF THE ARGUMENT

Resort to Declaratory Judgment relief is appropriate in this case because there is a substantial definite controversy involving the construction and application of the Railway Labor Act, of vital public interest affecting commerce and the operation of the Carrier. There is no prohibition in the Railway Labor Act or any other federal law for granting such relief.

The construction of a contract is not involved, but even if there were questions of the construction of contracts involved, federal law, and not state law, would govern, because it is alleged that the Railway Labor Act condemns, as unlawful, the Mediation Agreement made by the Carrier and the Firemen's Committee, the answer to which must be reached from the statute and the federal policy involved.

The Norris-LaGuardia Act has no bearing upon the propriety of granting a declaratory judgment, because no injunction has been sought.

The Railway Labor Act having made it the duty of the Carrier and its employees interested in a dispute

to confer and, if possible, settle such dispute, whether growing out of the application of contracts, or otherwise, and the trial court having found as a fact that the Carrier and the firemen are interested in the dispute involved in this case, which finding was concurred in by the Circuit Court of Appeals, the Mediation Agreement is valid and complete, and should be so declared by this Court.

ARGUMENT.

I.

RESORT TO DECLARATORY JUDGMENT PROCEDURE IS APPROPRIATE IN THE CIRCUMSTANCES PRESENTED IN THIS CASE.

Clearly, resort to declaratory judgment procedure is appropriate in this case. The Declaratory Judgment Act provides (28 U. S. C. A. 400):

> "(1) In cases of actual controversy * * * the Courts of the United States shall have power, upon petition * * * or other appropriate pleadings, to declare rights * * * of any interested party petitioning for such declaration * * *.
>
> "(2) * * * The application shall be by petition to a court having jurisdiction to grant the relief * * *."

A. Concerning Jurisdiction of the Federal Court.

In determining whether resort to declaratory judgment procedure is appropriate, it is, of course, necessary to first inquire whether the federal court has jurisdiction of the suit. The Circuit Court of Appeals took the position that the questions to be determined in this case were governed by the Railway Labor Act, a law of the United States, which is also a law regulating commerce.

and that therefore, jurisdiction exists under 28 U. S. C. A., 41 (8), which law provides:

> "The district court shall have original jurisdiction as follows:
>
> (8) Suits for violation of interstate commerce laws. Eight. Of all suits and proceedings arising under any law regulating commerce."

The allegations in the complaint govern the question of whether the Court has jurisdiction. The complaint must be taken as true in determining the question of jurisdiction. The claim may be ultimately dismissed, but this does not mean that the court lacked jurisdiction.

In *Fair, Appt. v. Kohler Die & Specialty Co., 228 U. S. 716*, this Court, in discussing the matter of jurisdiction of the federal court, said:

> "But if the plaintiff really makes a substantial claim under an act of congress, there is jurisdiction whether the claim ultimately be held good or bad."

The Supreme Court held that jurisdiction existed because the claim was based upon a federal law.

In the instant case, the Engineers' Committee alleged a substantial claim or right to which it claims it is entitled to protection under the Railway Labor Act (R. 33). Engineers' Committee alleged the violation of that right (R. 26, 33). Engineers' Committee alleged the exclusive right to negotiate with the Carrier concerning a matter which directly involved the pay of the Engineers. This is a valuable right. Engineers' Committee alleged this exclusive right, which admittedly is of value, has been infringed upon by the Carrier and the firemen, in violation of the Railway Labor Act.

It has been held by this Court that an employee can

sue a carrier to protect rights given him through a collective bargaining contract made by the employee's representative with the Carrier (*Moore v. Illinois Central R. Co., 312 U. S. 630*); It thereby recognized that rights under such contract were entitled to legal protection. If the employee can sue under the contract, it seems that his representative could do likewise.

The construction and application of the Railway Labor Act is clearly involved in the complaint of the Engineers' Committee. It is contended in the petition that under a proper construction and application of the Act, the Engineers' Committee has the exclusive right to confer and contract with the Carrier concerning the matter in dispute. The complaint alleges that the Firemen's Committee has no right to treat and agree with the Carrier concerning the matter in dispute, under a proper construction and application of the Act.

As to the prohibition which Engineers' Committee contends is contained in the Railway Labor Act, the Supreme Court of the United States had this to say in the case of *T. & N. O. R. Co., et al v. Brotherhood of Ry. and Steamship Clerks, etc., et al, 281 U. S. 548*, involving the 1926 Act:

> "If Congress intended that the prohibition, as thus construed, should be enforced, the courts would encounter no difficulty in fulfilling its purpose, as the present suit demonstrates."

In the T. & N. O. case, the Brotherhood of Clerks sued for an injunction against the T. & N. O., to restrain the Railroad from interfering with the clerical employees in the matter of their organization and designation of representatives for the purpose of the Railway Labor Act. The Court said:

"The controversy is with respect to the construction, validity, and application of this statutory provision [meaning Railway Labor Act]."

B. Concerning Propriety of Declaratory Judgment Procedure.

The Court having jurisdiction, the test as to whether a declaratory judgment by the Court is appropriate would depend upon whether there was "an actual controversy" of sufficient public interest as, in the Court's sound discretion, such judgment should be rendered, and there is no prohibition for a declaratory judgment under the federal law. There appears to be nothing in the Railway Labor Act which would forbid the granting of declaratory relief. Nor do we believe any other federal law forbids such relief.

An examination of the facts in this case conclusively shows "an actual controversy" between the parties. Commencing in 1937, a controversy arose between the Firemen's Committee and the Carrier involving the subject-matter of this suit, and continued more or less unabated as a very real thing, including a threatened "strike", until the Mediation Agreement was made in 1940 between the Carrier and the Firemen's Committee (R. 191, 192, 193, 194). From 1939 down to date, there has been a real controversy between the Engineers' Committee and the Carrier concerning the subject-matter of this suit (R. 193, 194, 196).

There is a real, actual, definite and concrete dispute involved in this suit. It involves the transferring of firemen to work as engineers in certain instances. The Engineers' Committee says it has the exclusive right to treat and agree with the Carrier concerning such transfer by virtue of the Railway Labor Act. The Carrier

Addition by us.

and the Firemen's Committee say that the firemen are interested in the dispute and that there is an overlapping of interest between engineers and firemen, and that under the Railway Labor Act, the Carrier must also treat with the Firemen's Committee and agree, if possible, concerning the dispute.

The Carrier has used its best efforts to compose the controversy. The Railway Labor Act makes no provisions for one Union to treat with another and settle disputes in which they are interested. We do not know why the Congress failed to make such provision. It seems to the Carrier that the Engineers' Committee and the Firemen's Committee should be able to confer and settle a dispute in which there is a mutual interest, in a manner which would also be fair to the Carrier.

If the facts had warranted it, the Engineers' Committee would have been entitled to injunctive relief (*Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515*). The right of a representative to bargain exclusively for employees in a particular craft is a valuable right and entitled to legal protection (*T. & N. O. R. Co. v. Brotherhood of Ry. Clerks, 281 U. S. 548; Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515*). Clearly if the dispute is one which could warrant injunctive relief, a controversy within the meaning of the Declaratory Judgment Act exists.

In *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U. S. 227*, it is held that in order for declaratory judgment relief to be proper, there must be adverse legal interests; a real and substantial controversy in which a conclusive decree may be rendered; that it is not essential that an award of process or payment of damages be sought; and that it is not essential an in-

junction be sought or that irreparable injury is threatened. Certainly under this decision, declaratory relief is appropriate in the instant case.

Adams et al v. New York C. & St. L. R. Co., 121 F. 2nd 808, Seventh Circuit, directly involved resort to the Declaratory Judgment Act for the purpose of defining seniority rights of employees regardless of remedies available to such employees before administrative tribunals, as provided by the Railway Labor Act. One question involved in that case was whether the Railway Labor Act, in providing specifically for an administrative forum to determine controversies like the one here presented, impliedly deprived the Federal District Court of jurisdiction, which it otherwise would have had under the diversity of citizenship statute. In holding that the Railway Labor Act did not deprive the Federal District Court of jurisdiction, the following language was used:

> "Upon the merits, in view of the decision of the United States Supreme Court, in Earl Moore v. Illinois Central Railroad Company, 61 S. Ct. 754, 85 L. Ed. —, decided March 31, 1941, the order of the District Court sustaining the defendant's motion to dismiss plaintiffs' complaint, was erroneous; the complaint should stand. In view of the Supreme Court's clarifying language as to the intended scope of the Railway Labor Act, 45 U. S. C. A. Sec. 151 et seq., we can definitely state that the employees' action may be brought, at their election, either in a court, or settled by the administrative remedies prescribed by said Act."

As to whether the Court should exercise its jurisdiction to declare the rights of the parties, there seems little doubt. The controversy is over a matter of vital public interest. Over a long period, the Carrier has been unable

to compose the differences involved. The Engineers' Committee has indicated that it should and will abide a judicial decree settling this controversy (Engineers' Committee Brief, 32). Failure to declare the rights of the parties will lead to continued expense, confusion and uncertainty such as may materially interrupt commerce and the operation of the Carrier. Certainly a failure of the Court to declare the rights of the parties will throw the Carrier back in a dilemma and both Committees will be asserting an exclusive right to confer with the Carrier concerning the matter in dispute.

Finally, there is nothing in the Railway Labor Act to prohibit declaratory relief. *Washington Terminal Co. v. Boswell*, 124 F. 2nd. 235; affirmed by an equally divided court, June 14, 1943 (No. 28, 1942 Term), holds the Carrier is not entitled to declaratory relief after case has been taken and decided by an Adjustment Board. The reasons for denying relief in the Boswell case do not appear here.

The question raised by Judge Minton in the dissenting opinion in *Toledo, P. & W. R. R. v. Brotherhood of R. R. Trainmen, etc.*, 132 F. 2d 265, 274, as to whether or not all recourse afforded by the Railway Labor Act had been sought before coming into court is, in our opinion, sufficiently answered by the testimony of Mr. Grace in the instant case (R. 200). Mr. Grace testified that if the matter had gone to an Emergency Board, the Engineers would not have been bound by the findings of such Board because they were not a party thereto, and that since the Board could have found that the Firemen's Committee was correct in its contention, an unjust penalty against the Carrier could have easily resulted.

Moore v. Illinois Central R. Co., 312 U. S. 630, holds

that the Board's jurisdiction is not exclusive. Moore was allowed to sue the carrier upon a contract made by the representative of his craft without first exhausting administrative remedies granted by the Railway Labor Act. The majority opinion in the Boswell case recognizes that no conflict exists between the two holdings.

The dispute involved in the instant case is over the validity of an agreement, not over the interpretation or application of an agreement. Therefore, the dispute in question does not come within the jurisdiction of the Adjustment Board. No provision is made in the Railway Labor Act for the determination of the validity of a contract. There is no machinery provided in the Act to settle the legal issues involved in the present case.

II.

WHETHER ANY QUESTIONS OF THE CONSTRUCTION OF THE CONTRACT INVOLVED ARE GOVERNED BY STATE OR BY FEDERAL LAW.

The construction of contracts is not involved in this case. If the construction of contracts were involved, federal and not state law should govern.

The petition of the Engineers' Committee alleged that the agreement made by the Carrier and the Firemen's Committee was in violation of the Railway Labor Act (R. 26, 27). The Engineers' Committee demanded that the agreement be declared invalid, (R. 34), because unlawful under said Act. The construction and application of the Act are involved and we think this clearly presents a question of federal law.

Erie R. Co. v. Tompkins, 304 U. S. 64, did not involve the construction and application of an Act of Congress. It involved the common law of Pennsylvania

as declared by the Supreme Court of that state, and therefore does not apply to the instant case.

Where the construction and application of a federal statute is in question, this Court has held that the rule of the Erie case is not applicable and that federal law, not state law, governs. *Prudence Realization Corp. v. Geist*, 316 U. S. 89, 95, and the cases there cited. *Baltimore & O. R. Co. v. Kepner*, 314 U. S. 44.

In *Sola Electric Co. v. Jefferson Electric Co.*, 63 S. Ct. 172, 173, 174, this Court held that

> "the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules. In such a case our decision is not controlled by Erie Railroad v. Tompkins * * There we followed state law because it was the law to be applied in the federal courts. But the doctrine of that case is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they effect must be deemed governed by federal law having its source in those statutes, rather than by local law. * * * When a federal statute condemns an act as unlawful the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield. * * *".

Irving Trust Co. v. Day, 314 U. S. 556, 561, announces the rule as follows:

> "When this Court is asked to invalidate a state statute upon the ground that it impairs the obligation of a contract, the existence of the contract and

> the nature and extent of its obligation become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a state court * * *"

The Texas courts consider themselves bound by the decisions of this Court construing and applying the Railway Labor Act. *Watson v. M-K-T R. Co. of Texas*, 173 S. W. 2d 357, 361, writ of error refused for want of merit, by Supreme Court of Texas.

If the law of the various states should control the question here involved, it is conceivable that a different decision would be reached in each state where such a controversy might arise. Such a controversy would doubtless arise in each state in which the Carrier operates. A situation of this kind would of necessity "interrupt commerce" and materially "affect the operation" of railroads.

III.

THE NORRIS-LaGUARDIA ACT DOES NOT PREVENT DECLARATORY JUDGMENT RELIEF IN THIS CASE.

Injunctive relief has not been sought in this suit. Only a declaration of the rights of the parties and an adjudication as to the validity of the Mediation Agreement are involved. Even though injunctive relief had been sought, the Norris-LaGuardia Act would not have prohibited it.

The Engineers' Committee complained that it had the exclusive right to confer and settle the dispute in question. The petition alleges that in violation of the Railway Labor Act, the Carrier and the Firemen's Committee infringed that exclusive right by making the Mediation Agreement, and that therefore, the same is

invalid (R. 33). Both the Carrier and the Firemen's Committee asserted the validity of the agreement under the Act.

This Court permitted injunctive relief in *Virginian R. Co. v. System Federation No. 40, 300 U. S. 515, 548, 549.*

It is held in the Virginian case that:

> "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U. S. C. A., Sec. 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

IV.

ARGUMENT ON THE MERITS

A. Concerning Findings of Fact Made by the Trial Court Concurred In by the Circuit Court of Appeals.

It must be borne in mind that upon the trial of this case, certain facts were in dispute. The case was tried without a jury and the trial court found the facts. The question of "interest" and the employees involved in such "interest" was one of the chief matters in controversy.

The findings of fact made by the trial court have the force and effect of a verdict by a jury. *Williams v. Planters' & Mechanics' National Bank, 45 S. W. 699.* No attack has been made upon such findings by the Engineers' Committee. It is not contended that there is no support in the evidence for the findings made by the trial court. Where there is substantial evidence to

support the "verdict", a court cannot substitute its own findings. *Strack v. Strong, 135 S. W. 2d 754*, writ of error dismissed, judgment correct, by Supreme Court of Texas.

The trial court found as a fact, among other things, that:

> "I find that the controversy between the plaintiff [Engineers' Committee] and the third party defendant [Firemen's Committee]' as set out in the pleadings, and as disclosed by the testimony, is over a matter which affects both crafts.
>
> "That the defendant [Carrier] had a right to contract with either of the crafts with reference to the questions presented in the pleadings of the parties here—that is, the passing of a man from the working lists of the Firemen to the working lists of the Engineers, and what should happen when an Engineer who was in the pool was absent, with reference to the choice of the extra man or the demoted Engineer available on the Firemen's lists, and with

"FINDINGS OF FACT.

"I.

"I find that the plaintiff has the right under the Railway Labor Act to contract for its craft.

"I find that the third party defendant has a right to contract under the Railway Labor Act for the three things set out in the act, relating to its craft.

"I find that the controversy between the plaintiff and the third party defendant, as set out in the pleadings, and as disclosed by the testimony, is over a matter that effects both crafts.

"I.

"That the defendant had a right to contract with either of the crafts with reference to the questions presented in the pleadings of the parties here, that is, the passing of a man from the working lists of the firemen to the working lists of the engineers, and what should happen when an engineer who was in the pool was absent with reference to the choice of the extra man or the demoted engineer available on the firemen's lists, and with reference to each of the three items covered by the mediation agreement of December 12, 1940." (R. 77, 78.)

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reference to each of the three items covered by the mediation agreement of December 12, 1940." (R. 77, 78.)

The Engineers' Committee pleaded that the Carrier had unlawfully dealt with the Firemen's Committee in making the Mediation Agreement concerning rules and working conditions of the craft of engineers in their services as locomotive engineers (R. 33). The Carrier pleaded that members of both crafts were interested in the dispute and offered to enter into a joint agreement with both to settle the dispute, provided it would not be penalized under such agreement (R. 16, 17). The Firemen's Committee pleaded that the time and circumstances under which firemen are assigned as engineers and return to jobs as firemen are the subjects of direct interest and concern to all members of the craft or crafts of firemen (R. 47).

Mr. Grace, vice-president and general manager of the Carrier, testified:

> "In handling the matter with the firemen * * * matters which they endeavored to make agreements with us, were matters that engineers were also involved in, and that it was a jurisdictional question, and that both organizations should attempt to dispose of it between themselves, rather than to bring the railroad a party to the disagreement, and use the railroad to whip the other organization, use the railroad as the buffer for the proceeding (R. 173)."

There being substantial evidence that both the firemen and the engineers are interested in the dispute in question, and the Court having found as a fact that both are interested, and there being pleadings to support such findings, are not the parties to this suit bound thereby?

Can the Engineers' Committee now successfully contend that the firemen are not interested in the dispute? Isn't the dispute such a one as contemplated by the Railway Labor Act? Is not this Court bound by the findings of fact made by the trial court and concurred in by the Circuit Court?

The Railway Labor Act, 45 U. S. C. A., 152, provides:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to *settle all disputes*[6], whether arising out of the application of such agreements, *or otherwise*[7], in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof *interested*[8] in the dispute."

The Railway Labor Act imposes the duty, not only upon the carrier, but upon employees, to exert every reasonable effort to settle all disputes, whether arising out of contracts OR OTHERWISE in which such employees are interested. Could the Congress have been so inconsistent as to have intended that a carrier and its employees are bound to exert every reasonable effort to settle disputes arising between them in which both

[6] Italics ours.
[7] Italics ours.
[8] Italics ours.

are interested, but forbid a carrier to attempt to settle disputes with the representatives of employees interested in such dispute? We think not.

Nor do we need look further than to the general purposes of the Railway Labor Act for a positive answer as to the intention of the Congress. The Railway Labor Act, 45 U. S. C. A. 151a, provides:

> "The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Nor do we believe that it was the intention of the Congress that the interpretation of the Railway Labor Act should be highly technical, as is contended by the Engineers' Committee and the Solicitor General. We ask, why did the Congress say "ALL DISPUTES" should be settled, if it meant, as is contended by the Engineers' Committee and the Solicitor General, that just certain particular disputes should be settled? The Act provides that, 45 U. S. C. A. 155:

> "First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:
>
> "(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
>
> "(b) Any other dispute not referable to the

National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement * * *"

From 1913 to 1927, the Engineers' Committee must have believed the Firemen's Committee had an interest in the subject-matter of this suit. The Chicago joint agreement between Engineers' Committee and Firemen's Committee, among other things, provided a rule for the moving of firemen to engineers and transferring engineers back to firemen (R. 233, 234, 235, 236, 237). The interest of the firemen in the subject-matter of this suit was recognized by the Engineers' Committee by amendment (R. 237, 244). In fact, the Engineers' Committee recognized the interest of the firemen in the dispute in question up until 1927 when such agreements were cancelled by the Engineers' Committee (R. 255). One of the items in the Mediation Agreement was in effect on all railroads in the West (R. 194).

The Mediation Board must have believed the Firemen's Committee had such an interest in the dispute between the Firemen's Committee and the Carrier as to entitle the Firemen's Committee and the Carrier to confer and mediate the dispute; otherwise, it would not have proffered its services. It would not have attempted to bring the Firemen's Committee and the Carrier to agreement over the dispute. The Mediation Board approved

the mediation agreement between the Firemen's Committee and the Carrier (R. 27, 28).

Although there was substantial evidence that the firemen were interested in the dispute, and such was found as a fact by the trial court, the Engineers' Committee still contends that the Firemen's Committee is not interested. Is it likely that a dispute will arise among parties unless an interest of one or both is involved? We think the evidence shows a question involving the interest of both engineers and firemen, and that there is an overlapping of interest. The interest of both over the matter in dispute is substantial and has been recognized as such over a long period of years.

The position taken by the Engineers' Committee in this suit is anomalous. Since 1918, the engineers have had a contract with the Carrier containing the following provision:

> "Art. 44: (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions: * * *" (R. 102).

The engineers' contract with the Carrier also contains provisions concerning the promotion of firemen to engineers (R. 99, Art. 43). The engineers have not repudiated such provisions in their contract. They contend the provisions are valid and binding upon the Carrier (R. 22).

The Firemen's Committee admits the dispute involves matters in which both crafts are interested (Firemen's Committee's Brief in the Circuit Court, 29). Since

1918, the firemen have had a contract with the Carrier containing the following provision:

> "Art. 49 (a) When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority District, those taken off may, if they so elect, displace any firemen their junior on that seniority District under the following conditions * * * (R. 218)."

The firemen's contract with the Carrier also contains provisions concerning the promotion of firemen to engineers (Art. 58, R. 220, 221, 222, 223, 224). This contract is in full force and effect and binding upon the Carrier and the firemen. The engineers have raised no question as to the validity of such contract. The Carrier obtains all, or practically all, of its engineers from the firemen's class, and it therefore seems obvious that the firemen are interested in *how*, *when*, and *under what conditions* the firemen shall become engineers. The fireman aspires to be an engineer. That position pays more money. The work is more desirable. Some firemen work years trying to qualify as an engineer. Some try and never become engineers. The number of engineers presently in the service of the Carrier is of vital interest to the firemen because it not only affects the number of firemen who can work as firemen, but it affects the amount of money the firemen can earn. If the Engineers' Committee had the exclusive right to say when a fireman should be made an engineer, then it is conceivable that no fireman could be promoted to the position of engineer. Such is the contention of the Engineers' Committee but, we think, without merit.

B. Concerning the Decision In Virginian R. Co. v. System Federation No. 40, 300 U. S. 515.

Much has been written and said about a portion of

the opinion in the Virginian case. Maybe we have misconstrued the language used, but we do not think so. The particular part of the opinion over which much argument has arisen reads as follows:

> "It [Railway Labor Act]" imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

We think the language quoted means that the Carrier must treat, as regards the instant case, with the representative of the engineers if a dispute between the engineers, involving a matter of interest to the engineers, arises with the Carrier. Conversely, if a dispute arises between the firemen and the Carrier, involving a matter of interest to the firemen, the Carrier must treat with the true representative of the firemen, and not some party who is not the true representative of the firemen.

In elaborating upon the foregoing language quoted from the opinion in the *Virginian* case, the Court stated:

> "* * * the injunction against petitioner's entering into any contract concerning rules, rates of pay, and working conditions, except with respondent, is designed only to prevent collective bargaining with any one purporting to represent employees, other than respondent, who has been ascertained to be their true representative."

The Firemen's Committee is not purporting to represent the engineers. The Firemen's Committee is representing the firemen in a dispute involving the firemen. The Carrier entered into the Mediation Agreement with the Firemen's Committee concerning a dispute in which the firemen were interested.

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The decision in the *Virginian* case reiterates the rule that this Court is bound by the findings of fact of the lower court as follows:

> "The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by evidence. We accordingly accept them as the conclusive basis for decision * * *"

We think the *Virginian* case is authority for the validity of the Mediation Agreement made by the Carrier and the Firemen's Committee. Clearly, the Mediation Agreement is not in conflict with the holding in the *Virginian* case.

C. Other Authorities In Support of Validity of the Mediation Agreement.

In deciding this case, the Circuit Court of Appeals italicized the pertinent provisions of the Railway Labor Act applicable to a proper disposition of this case. It quoted 45 U. S. C. A. 152, Second, supra, and italicized the following words: "INTERESTED IN THE DISPUTE."

As previously stated, the Circuit Court concurred with the trial court to the effect that both the engineers and the firemen were interested in the dispute—that is, a rule for the transfer of men from one to the other. Frankly, we think the Circuit Court went too far in holding the Mediation Agreement incomplete because it did not include the engineers. In all other respects, we submit the decision is sound. We think the trial court's judgment is the correct one, except wherein the trial court ordered the complaint dismissed. It seems to us that the trial court should have ordered that the relief sought by the Engineers' Committee should have been denied.

The Railway Labor Act does not force parties to contract; it simply makes it their duty to confer or negotiate. The Carrier and the Engineers' Committee did confer and tried to negotiate but could not agree. The fact that the Engineers' Committee and the Carrier could not make an agreement to settle a dispute between them is, of course, no reason why the Carrier and the Firemen's Committee cannot make an agreement for the settlement of a dispute involving the Carrier and the firemen.

In *Order of Ry. Conductors of America, et al v. National Mediation Board et al, 113 F. 2d 531,* the Order of Ry. Conductors (ORC) sued to set aside a certificate of the National Mediation Board to the effect that the Brotherhood of R. R. Trainmen (BRT) is entitled to represent yardmen (including yard foremen or yard conductors, yard helpers or yard brakemen, and switchtenders) on that road. It was argued that the Board's findings that yard foremen or yard conductors are part of the craft or class of yardmen was not supported by substantial evidence, or was arbitrary and capricious. The trial court found that there was sufficient evidence to support the Board's finding and dismissed the suit, and the dismissal was affirmed by the U. S. Court of Appeals for the District of Columbia.

In disposing of the *Order of Ry. Conductors* case, the Court of Appeals stated (p. 533):

> "We think the certification is not arbitrary and is supported by abundant evidence. The Railway Labor Act is intended not merely to protect independence and the right to organize, but also to settle disputes and avoid interruptions in operation * * It intends that groups which have chosen to bargain as units may do so."

The Supreme Court of the United States, in *T. & N. O. R. Co. et al v. Brotherhood of Ry. and Steamship Clerks, etc., et al*, 281 U. S. 548, in passing upon the finality of facts found by the lower court, had this to say:

> "On the questions of fact, both courts below decided against the petitioners. Under the well-established rule, this court accepts the findings in which two courts concur, unless clear error is shown."

D. Concerning the Position of the Carrier.

The Carrier knows, through long years of experience and actual practice, that both firemen and engineers are interested in *how, when*, and *under what circumstances* a fireman is made an engineer, and when an engineer is made a fireman. Knowing this, it has been the position of the Carrier, and still is, that, both parties being interested, the two ought to agree on the dispute in question and settle it without the Carrier's being penalized.

Since both are interested in the controversy, the Carrier can—in fact, must—treat with both, and exert every reasonable effort to settle the dispute with both. However, if it is unable to settle the dispute with one, then it should with the other. The fact that it has been unable to settle the dispute with one should not prevent it from settling with the other. Such was the intention of the Congress, and such is the fulfillment of the very words of the Railway Labor Act.

In accordance with the provisions of the Railway Labor Act, the Carrier and the Firemen's Committee settled the dispute in which both were interested. Such agreement was and is complete. The Carrier says it is complete, and so does the Firemen's Committee.

Time and again, the courts have reiterated that the Railway Labor Act is intended to provide for the amicable settlement of disputes between a carrier and its employees. The Act expressly so provides. 45 U. S. C. A. 151 (4, 5), supra. Any holding which would prevent a carrier from conferring with its employees over a dispute in which either is interested will defeat the very purpose of the Act. Such a holding will prevent the very thing it was intended to accomplish. Such a holding would encourage "strikes", and interruption to commerce, the operation of a carrier, discourage prompt and orderly settlement of disputes concerning rates of pay, rules, and working conditions, and disputes growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.

CONCLUSION.

The mediation agreement between the Carrier and the Firemen's Committee is valid and complete; both the Engineers' Committee and the Firemen's Committee have an interest in the subject-matter of dispute and neither one is prohibited by the Railway Labor Act from conferring with the Carrier and, if possible, settling such dispute, and the Engineers' Committee having declined to agree to a settlement with the interested parties to the matter in dispute, the Carrier and the Firemen's Committee were free to agree to a settlement.

WHEREFORE, the Carrier prays the Court to set aside the judgment of the Circuit Court and render judgment sustaining the trial court; in the alternative,

to render judgment sustaining the Circuit Court, together with its costs.

Respectfully submitted,

G. H. PENLAND,
ALLEN WIGHT,
LUCIAN TOUCHSTONE.

A true copy hereof has been delivered to the respective attorneys of record in this case, by depositing true copy thereof in the United States mail, addressed to them at their respective offices, on the day of October, 1943.

APPENDIX A

RAILWAY LABOR ACT, 45 U. S. C. A., SECS. 151-163.

Section 151. Definitions.

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission. The term "employee"

shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the district court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act."

Section 151a. General purposes.

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Section 152. General duties.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes

of this chapter. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agree-

ments concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of their party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held, binding upon the parties, regardless of any other express or implied agreement between them.

Ninth. If any dispute shall arise among a carrier's

employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of

this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall wilfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Section 153. National Railroad Adjustment Board.

First. There is hereby established a Board to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations

of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by said board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 31, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office, within

thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party disignated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation

Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers: that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected

by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carrier and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the

division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division or any member therof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division

of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he the findings and order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division oof the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise,

as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after June 21, 1934 and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairman-

ship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a represenative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members o fsuch regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure

as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

Sec. 154. National Mediation Board.

First. The Board of Mediation is abolished, effective thirty days from June 21, 1934 and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934 shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board," to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall

qualify, but not before thiry days after June 21, 1934, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occuring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarly or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on June 21, 1934 shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia.

but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the the work of the Board; (2) in accordance with sections 661-674 of Title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this title, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this title, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. The Mediation Board is hereby authorized

by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

Section 155. Functions of Mediation Board.

First. The parties, or either party, to a dispute be-

tween an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of the title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this title:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by Section 157 of this title, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this chapter. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board,

or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934, every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbi-

tration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board o fany and all such papers and documents filed with it or in its possession.

Section 156. Procedure in changing rates of pay, rules and working conditions.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

Section 157. Arbitration.

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is

not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the paties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each nam two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or

arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Medi-

ation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under chapter 1 of Title 49.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the

compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in chapter 1 of Title 49.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

Section 158. Agreement to arbitrate.

The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agree-

ment, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

Section 159. Award and judgment thereon.

First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agrement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the abitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Section 160. Emergency Board.

If a dispute between a carrier and its employees be

not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby auhorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

Section 161. Effect of partial invalidity of chapter.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitu-

tional, such decision shall not affect the validity of the remaining portions of this chapter. All Acts or parts of Acts inconsistent with the provisions of this chapter are repealed.

Section 162. Appropriation.

There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

Section 163. Repeal of prior legislation; exception.

Chapters 6 and 7 of this title; providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

APPENDIX B.

THE DECLARATORY JUDGMENTS ACT. 28 U. S. C. A., SEC. 400.

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree an dbe reviewable as such.

(2) Further relief based on a declaratory judgment

or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be sumitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

APPENDIX C

THE NORRIS-LaGUARDIA ACT. 29 U. S. C. A., SECS. 101-115.

Sec. 101. No court of the United States, as defined in sections 101-115 of this title shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections.

Sec. 102. In the interpretation of sections 101-115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdicion and authority are defined and limited in such sections, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for own-

ers of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 103. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, i shereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

Sec. 104. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceaasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participatin gor interested in any labor dispute who is being proceeded against in, or is prosectuing, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Sec. 105. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

Sec. 106. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Sec. 107. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after

hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's prpoerty will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided*,

however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 108. No restraining order or injunctive relief

shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Sec. 109. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case invloving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in sections 101-115 of this title.

Sec. 110. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing

of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

Sec. 111. In all cases arising under sections 101-115 of this title in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly wit hthe administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

Sec. 112. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

Sec. 113. When used in sections 101-115 of this title, and for the purposes of such sections—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are

engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has

been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Sec. 114. If any provision of sections 101-115 of this title thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of such sections and the application of such provisions to other persons or circumstances shall not be affected thereby.

Sec. 115. All acts and parts of acts in conflict with the provisions of sections 101-115 of this title are hereby repealed.